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ARIZONA CORPORATION COMMISSION

March 14, 2003

Mr. Jay L. Shapiro
FENNEMORE CRAIG PC
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Re: Johnson Utilities, L.L.C. dba Johnson Utilities Company
Docket No. WS-02987A-99-0583; WS-02987A-00-0618
Decision No. 64062 (October 4, 2001)

Dear Mr. Shapiro:

I am in receipt of your March 10, 2003 letter to the Commissioners relating to the above-referenced Commission Decision. Of course, I also received the draft Special Action and Declaratory Judgment Complaint. I have no reason to believe that Chairman Spitzer or any of the other Commissioners will be responding directly to your letter. Therefore, I thought it advisable to send this letter by way of response to your request of the Commissioners.

It is apparent from reviewing your letter that you misunderstood the Legal Division's position in this matter. You indicate in your letter that I offered the opinion that the Commission's actions at the Open Meeting on December 17, 2002 constituted a "form of final action", presumably a final action on Johnson Utilities Company's (Johnson) request for a retroactive extension of time to comply with Decision No. 64062. I further infer from your letter that you believe that the Commission was under a legal obligation to consider Johnson's request for retroactive extension of time and either grant or deny that request.

I apologize if I failed to adequately represent my legal opinion in a manner that you would understand. When I say that it is my opinion that final action has been taken in this matter, I am referring to the issuance of Decision No. 64062. It is my opinion that Decision No. 64062 fully and finally resolved the issuance of a CC&N to Johnson. As I understand it, the Decision granted Johnson a CC&N, subject to certain conditions. Among those conditions was that Johnson maintain compliance with ADEQ requirements and report to the Commission by a date certain regarding that compliance. It is my further understanding that if Johnson failed to comply with the requirements imposed by Decision No. 64062, it provided that Johnson's application for a CC&N would be deemed denied, without further order of the Commission. Finally, I believe that Decision No. 64062 has become final and is not subject to appeal at this time.

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BRIAN C. MCNEIL
Executive Secretary

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Your letter points out that, pursuant to Decision No. 64062, Johnson was required to make a filing by November 4, 2002, providing documentation that Johnson has been and is in compliance with ADEQ. It is equally clear from your letter that Johnson did not make the necessary filing. In fact, as far as I know, Johnson has still not made any filing providing documentation that it is in compliance with ADEQ requirements. Rather, Johnson filed a request for a retroactive extension of the time to comply with Decision No. 64062.

It is my opinion that the request for retroactive extension is a procedural request, seeking entirely discretionary relief from the Commission in relation to a full and final determination that was made in Decision No. 64062. I do not believe the Commission is under any obligation to consider the request, at Open Meeting or otherwise. The fact that an Administrative Law Judge prepared a Recommended Opinion and Order which would have granted the request if approved by the Commission, does not alter the nature of the request. While the Commission may choose to consider Johnson's request, it has previously issued a full and final decision which remains effective unless it is changed by the Commission.

I hope you find this explanation helpful. To the extent you are interested in ascertaining the Commission's view regarding Johnson's request for retroactive extension of time, the fact that no Commissioner was even willing to move the item for discussion is instructive. However, I do not believe that the Open Meeting Law is implicated by the Commission declining to entertain a vote on a request for procedural relief from a full and final Decision by the Commission. In addition, and as a final point, I believe your draft Special Action Complaint to be defective in three regards: First, as indicated above, the Commission is under no obligation to consider at Open Meeting a retroactive request for procedural relief from one of its Decisions; Secondly, the Special Action Complaint would constitute an impermissible collateral attack on Decision No. 64062; and, finally, there has been no showing that Johnson is able to comply with the requirements of Decision No. 60642 even to this day.

Please feel free to contact me at (602) 542-6025 if you have any questions.

Sincerely,



Christopher C. Kempley
Chief Counsel, Legal Division

cc: Chairman Marc Spitzer
Commissioner Jim Irvin
Commissioner William A. Mundell
Commissioner Jeff Hatch-Miller
Commissioner Mike Gleason
Brian McNeil
Lyn Farmer
Steve Olea